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Central Pacific Bank

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII


In re	)	Case No. 11-00981
	)	(Chapter 11)
LV KAPOLEI 54, LLC,)	
	)	SECURED CREDITOR CENTRAL
	)	PACIFIC BANK'S MOTION FOR
Debtor.	)	DETERMINATION UNDER 11
	)	U.S.C. § 362(d)(3) OF SINGLE
	)	ASSET REAL ESTATE STATUS;
	)	MEMORANDUM IN SUPPORT
	)	OF MOTION; DECLARATION OF
	)	MARK P. HARNER
)	
	)	DATE: May 16, 2011
	)	TIME: 10:30 a.m.
	)	JUDGE: Robert J. Faris
)	

SECURED CREDITOR CENTRAL PACIFIC BANK'S
MOTION FOR DETERMINATION UNDER
11 U.S.C. § 362(d)(3) OF SINGLE ASSET REAL ESTATE STATUS

Secured Creditor CENTRAL PACIFIC BANK, by and through its counsel, Kessner Umebayashi Bain & Matsunaga, hereby moves this Honorable Court for an order pursuant to 11 U.S.C. § 362(d)(3) determining that this case is a single asset real estate case.

This motion is made pursuant to 11 U.S.C. § 362(d)(3), Rule 9013 of the Federal Rules of Bankruptcy Procedure, and LBR 9013-1. This Motion is based upon the attached Memorandum in Support of Motion and is supported by the attached Declaration of Mark P. Harner and the records and files herein.

DATED: Honolulu, Hawaii, April 15, 2011.



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UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF HAWAII

In re)	Case No. 11-00981
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)	MEMORANDUM IN SUPPORT
)	OF MOTION
Debtor.)	
)	
)	
)	

MEMORANDUM IN SUPPORT OF MOTION

Secured Creditor CENTRAL PACIFIC BANK (hereafter "CPB"),
respectfully submits this Memorandum in Support of its Motion for a
determination that this bankruptcy proceeding is a single asset real estate case.

I. RELEVANT FACTS

On April 8, 2011 (the "Petition Date"), LV Kapolei 54, LLC ("LV Kapolei") filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, et seq.

LV Kapolei is a Delaware limited liability company which owns 53.712 acres of vacant land located at Kalaeloa, Honouliuli, District of Ewa, State of Hawaii, identified by Tax Map Key No. (1) 9-1-075-035, hereafter the "Property". LV Kapolei has no other assets that are unrelated to this Property.

See, Debtor's Schedules A and B filed herein on April 8, 2011. The Debtor is not conducting any business on the Property.

According to the Debtor's Statement of Financial Affairs filed on April 8, 2011, it had gross income of \$7,210.00 to date and annual gross income of \$28,900.00 for 2009 and 2010, however, no source for the income was indicated.

A. CPB's Loan

On or about February 22, 2008, LV Kapolei executed and delivered a Promissory Note in favor of CPB in the original principal amount of \$21,450,000.00 (the "Note"). The Note is secured by, inter alia, that certain Mortgage, Security Agreement and Financing Statement dated February 22, 2008, recorded in the Office of the Assistant Registrar of the Land Court as Document No. 31715687 and duly noted on Transfer Certificate of Title No. 743,697 (the "Mortgage"). By executing the Mortgage, LV Kapolei encumbered its fee simple interest in the Property and related personal property, all of which are more particularly described in the Mortgage and that certain UCC Financing Statement recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2008-028744. The Mortgage is a first lien on the Property. The Debtor acknowledges that CPB is a secured creditor of this Estate and at the Petition Date, CPB was owed in excess of \$23,000,000.00.

On March 22, 2010, CPB filed a foreclosure action in the case captioned Central Pacific Bank v. LV Kapolei 54, LLC; et al., Civil No. 10-1-0596-03, filed in the First Circuit Court, State of Hawaii. Commissioner Dexter Higa conducted a public auction of the Property on March 23, 2011, and CPB was the highest bidder at \$16,000,000.00. The date for the confirmation hearing was not scheduled as of the Petition Date.

II. LEGAL ARGUMENT

11 U.S.C. § 101(51B) of the Bankruptcy Code defines “single asset real estate” as:

real property constituting a single property or project, other than residential real property with few than 4 residential units, which generates substantially all of the gross income of a debtor who is not a family farmer and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental.

In re Oceanside Mission Associates, 192 B.R. 232 (Bankr. S.D. Cal. 1996), the Court concluded after reviewing and citing to other cases that, “single asset real estate” “includes undeveloped real property which generates no income”.

See also, In re Sargent Ranch, LLC, 2010 WL 3189714 (Bankr. S.D. Cal. 2010).

In this case, the sole asset owned by LV Kapolei falls exactly within the definition of “single asset real estate”. The Debtor’s sole purpose is to develop

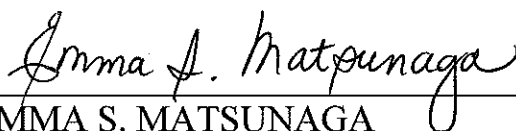
the vacant land which is its only asset. No part of the Property is residential. No rents or income are generated by the Property. No substantial business is being conducted by the Debtor on the Property. See, Declaration of Mark P. Harner attached hereto. Clearly, this is a single asset real estate case.

Therefore, CPB requests that the Court make a determination pursuant to 11 U.S.C. § 362(d)(3) that this proceeding constitutes a single asset real estate case such that the Debtor will be subject to the requirements set forth in that section of the Bankruptcy Code.

III. CONCLUSION

Based on the foregoing, CPB requests that this Court determine that this bankruptcy case is a single asset real estate case.

DATED: Honolulu, Hawaii, April 15, 2011.



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CENTRAL PACIFIC BANK

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re	)	Case No. 11-00981
	)	(Chapter 11)
LV KAPOLEI 54, LLC,)	
	)	DECLARATION OF
	)	MARK P. HARNER
Debtor.)	
)	
)	
)	

DECLARATION OF MARK P. HARNER

Pursuant to 28 U.S.C. § 1746, I, Mark P. Harner, declare that:

1. I am a Vice President of Secured Creditor Central Pacific Bank.
2. I make this Declaration based on my personal knowledge and am competent to testify as to the matters set forth herein.
3. This Declaration is made in support of Secured Creditor Central Pacific Bank's Motion for Determination Under 11 U.S.C. § 362(d)(3) of Single Asset Real Estate Status.
4. The only asset owned by LV Kapolei 54, LLC is its interest in the vacant land comprised of 53.712 acres located at Kalaeloa, Honouliuli, District of Ewa, State of Hawaii, identified by Tax Map Key No. (1) 9-1-075-035 (the "Property").

5. The Debtor is the developer of the subject Property.
6. No part of the Property is residential.
7. The Debtor is conducting no substantial business on the

Property.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Honolulu, Hawaii on April 14, 2011.


MARK P. HARNER